

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Lyndon Martinz v Simon Blackwood (Workers' Compensation Regulator)* [2014] QIRC 078

PARTIES: **Martinz, Lyndon**
(Appellant)

v

Simon Blackwood (Workers' Compensation Regulator)
(Respondent)

CASE NO: WC/2011/215

PROCEEDING: Appeal against a decision of Simon Blackwood
(Workers' Compensation Regulator)

DELIVERED ON: 7 May 2014

HEARING DATES: 25, 26 and 27 February 2014

MEMBER: Industrial Commissioner Fisher

ORDERS:

- 1. The appeal is dismissed.**
- 2. The decision of the Regulator is confirmed.**
- 3. The Appellant pay the Regulator's costs of and incidental to this appeal, to be agreed, or failing agreement, to be the subject of a further application to the Commission.**

CATCHWORDS: WORKERS' COMPENSATION - APPEAL AGAINST DECISION - Psychological/psychiatric injury diagnosed as severe anxiety and depression - Whether management action taken was reasonable and taken reasonably - Stressors - Awards night - Slow handclap - Opportunity to provide version of events - Conduct and communication style - Mediation - Roles/responsibilities statement - Support person - Allegations of misconduct - Secondary employment - Vehicle stickers obscured - Gratuity - Stress and anxiety - Each event had a cumulative effect - Events not considered globally - Determined reasonable management action taken reasonably - Determined injury withdrawn from s 32(1) because of operation of s 32(5) of the Act - Appeal dismissed.

CASES: *Worker Compensation and Rehabilitation Act 2003*, s 11, s 32(1), s 32(5)

Q-COMP v Glen Rowe (2009) 191 QGIG 67

Q-COMP v Darren Bruce Parsons (2007) 185 QGIG 1

APPEARANCES: Mr J. Murdoch, QC and with him Mr N. Jarro, Counsel instructed by Robert Bax & Associates for the Appellant.
Mr J. Wiltshire, Counsel directly instructed by Simon Blackwood (Workers' Compensation Regulator).

Decision

- [1] Lyndon Martinz, a Sergeant of the Queensland Police Service (QPS), was the Branch Manager of the Hills District Police-Citizens Youth Club when three events occurred in his employment in the period from July to September 2010. Mr Martinz contends that each of the events separately and/or globally constituted unreasonable management action taken in an unreasonable way and ultimately led to his decompensation on 10 September 2010.
- [2] In this appeal, Mr Martinz seeks an Order from the Queensland Industrial Relations Commission (the Commission) setting aside the decision of Q-COMP that confirmed the decision of WorkCover Queensland rejecting the application for compensation. He also seeks a further order that his appeal be allowed. (Note: Since the filing of the appeal the *Workers' Compensation and Rehabilitation Act 2003* (the Act) has been amended with the result that Q-COMP has been abolished and replaced by the Workers' Compensation Regulator, Simon Blackwood (the Regulator). In this decision the Regulator is used in place of Q-COMP).
- [3] The parties agree, and the Commission accepts, that at the time of his injury, Mr Martinz was a worker within the meaning of s 11 of the *Workers' Compensation and Rehabilitation Act 2003* (the Act). The parties further agree, and the Commission accepts, that Mr Martinz suffered a personal injury, which arose out of or in the course of his employment and employment was a significant contributing factor to that injury. In these circumstances the elements of s 32(1) of the Act are satisfied. The injury sustained by Mr Martinz was a psychological/psychiatric injury diagnosed as severe anxiety and depression.
- [4] The only issue to be determined in this appeal is whether the injury arose out of or in the course of reasonable management action taken in a reasonable way: s 32(5)(a) of the Act. Were this to be found, then s 32(5)(a) has the effect of withdrawing the psychological/psychiatric disorder from the definition of injury in s 32(1) of the Act.

Background

- [5] Before considering the three events, it is useful to outline the structure of Police Citizens Youth Clubs (PCYCs) and the reporting responsibilities of the Branch Managers. PCYCs are a joint enterprise between the QPS and the Queensland Police-Citizens Youth Welfare Association (QPCYWA), a not for profit organisation. A Sergeant of Police, who remains employed by, and responsible to, the QPS, manages a PCYC. They remain bound by the standards of sworn police officers. In addition, to their responsibilities to the QPS, the Sergeant is also responsible and answerable to the QPCYWA and the management committee of the Club.
- [6] In the present matter, Mr Martinz was the Branch Manager of the Hills District PCYC located at Arana Hills. Mr Martinz had been an officer of the QPS for nearly 27 years when he was retired on the grounds of ill health on 21 February 2014. He had spent 10 years with PCYCs eventually becoming Manager of the Hills District PCYC on 1 February 2004. During his tenure at the Hills District PCYC Mr Martinz was successful in the financial management of the Branch and substantially increased its membership.
- [7] Geoff McKay was the Chair of the management committee of the Hills District PCYC for 10 years until 12 July 2010. At the time of the events between July and September 2010, Graeme Cottam was the Zone Development Manager for the QPCYWA, whose responsibilities included the Hills District PCYC. Mr Cottam was a civilian manager working with 15 PCYCs to assist the police officers managing those clubs with commercial matters.
- [8] Senior Sergeant Andy Graham was the Officer in Charge at Ferny Grove Station who also had overview of and responsibility for the Hills District PCYC as well as being a member of its management committee. At the time Senior Sergeant Graham was also performing relief work as Inspector, Brisbane West District.
- [9] When the events occurred, Mr Martinz reported to Senior Sergeant Graham of the QPS and to Mr Cottam of the QPCYWA.

Consideration and Findings - The Stressors

Stressor 1 - 27 July 2010

- [10] The Statement of Stressors filed by the Appellant states that at the meeting of 27 July 2010, Senior Sergeant Graham and Mr Cottam put forward unfair and unsubstantiated allegations to Mr Martinz in a very intimidating manner.

The Event

- [11] The Hills District PCYC hosted an awards night at their premises on 7 July 2010. The event commenced at 6.30 pm with the formalities commencing at 7.00 pm. Mr McKay was the Master of Ceremonies for the event. Mr Martinz and Mr McKay had both been involved in the organisation and set-up for the night. They finished setting up at about 6.00 pm. Mr McKay went home to shower and change, returning

to the venue at about 6.50 pm. He arrived to a slow handclap. Mr Martinz said he did not commence the slow handclap but joined in when it was a normal handclap.

- [12] Mr McKay did not say anything about the slow handclap to Mr Martinz that night but raised the matter at the management committee meeting held the following Thursday. According to Mr Martinz, Mr McKay was very angry, saying that he (Martinz) had insulted him by joining in the slow handclap. Mr Martinz said he tried to explain to Mr McKay that he did not initiate or instigate the slow handclap but Mr McKay would not listen to him. Mr McKay resigned his position as Chair that night.
- [13] Mr Cottam did not attend the awards night but received a telephone call from Mr McKay on 26 July 2010 complaining about the slow handclap. In response to Mr Cottam's request that he put his complaint in writing, Mr McKay sent an email to that effect later that day. Mr Cottam referred the email to the CEO of the QPCYWA with the result that a meeting was held between Mr Cottam, the CEO of the PCYWA and the General Manager, Corporate Services. It was decided to seek advice from the Human Resources Manager, Mark Winters, and for Mr Cottam to meet with Senior Sergeant Graham. Senior Sergeant Graham believed he also spoke to Mr McKay about the awards night and subsequent management committee meeting where the matter was discussed.
- [14] Senior Sergeant Graham asked Mr Martinz to attend the District Office at Indooroopilly on 27 July 2010. Senior Sergeant Graham, Mr Cottam and Mr Martinz were present. Senior Sergeant Graham asked Mr Martinz to give his version of what had occurred at the awards night. He also raised the matter of Mr McKay's resignation in an attempt to see what could be done to repair the damage.
- [15] After Mr Martinz gave his version, Senior Sergeant Graham discussed the inappropriateness of the slow handclap and the embarrassment it had caused to Mr McKay. Senior Sergeant Graham also raised the apparent flippant apology given by Mr Martinz to Mr McKay at the Branch management committee meeting. Discussion then turned to Mr Martinz's communication style and concerns about his resistance to proposals for the Club's development.
- [16] To move matters forward Senior Sergeant Graham advised that he would try to arrange a facilitated meeting between Mr Martinz and the members of the management committee and would also try to have Mr McKay attend. He said Mr Martinz was content for this to occur. Mr Cottam agreed that this was the course adopted. However, Mr Martinz understood that a mediation would occur between him, Mr McKay, Senior Sergeant Graham and a trained mediator.
- [17] Mr Martinz said he felt hurt when the matter of his communication skills was raised as he believed he was being targeted because of his ethnic background. Mr Martinz was born in India and has Indian and Portuguese heritage. He moved to Australia in 1984 when he was 18 years of age. Although English is Mr Martinz's first language, by the time he arrived in Australia he had a heavy regional accent. Mr Martinz said it has moderated slightly during his residence in Australia. However, Mr Cottam said it was Mr Martinz who raised his cultural background with the result that his

communication was misunderstood. Senior Sergeant Graham had no recollection of Mr Martinz's cultural background being raised at the meeting.

- [18] Mr Martinz said he cried when he returned to his office. Mr Cottam said Mr Martinz was uncomfortable when the issue of his communication style was discussed but that he was engaging in the conversation about the matter. Mr Cottam did not perceive Mr Martinz to be distraught. Senior Sergeant Graham said that Mr Martinz was concerned but not emotional when the criticism of his communication style was raised.

The Management Action

- [19] The Appellant particularised concerns about the management action taken in respect of the meeting in submissions as follows:

- little notice was given of the meeting;
- no notice was given of its purpose;
- a meeting between Senior Sergeant Graham, Mr Cottam and Mr Martinz was out of the ordinary;
- there was no formal agenda;
- Mr Martinz's communication style was raised;
- Mr Martinz was not afforded the opportunity to have a support person present; and
- Mr Martinz became uncomfortable during the meeting.

- [20] The Appellant contends that because of these factors, the management action with respect to the meeting was unreasonable and taken unreasonably.

- [21] The Commission accepts the matters set out in the above dot points are matters of fact. However, the above list does not properly consider the context in which the meeting occurred. Mr McKay, the long standing chair of the Hills District PCYC committee of management, had been embarrassed at the awards night on 7 July 2010 by the slow handclap. Mr McKay believed that Mr Martinz had initiated and participated in that behaviour. He raised the matter at the next committee of management meeting and, after not receiving an adequate apology from Mr Martinz, resigned his position. Mr McKay subsequently lodged a formal complaint about Mr Martinz with Mr Cottam. As Senior Sergeant Graham and Mr Cottam were his two supervisors and had not been present at the awards night, they decided to meet with Mr Martinz to hear his version of events. I am satisfied that it was appropriate for both managers to meet with Mr Martinz as he had a reporting relationship with both of them and the issue reflected both on his role as a Police Officer as well as his role of Branch Manager.

- [22] The Commission accepts that Mr Martinz received little notice of the meeting and was not notified of its purpose. I accept it might have been better had Mr Martinz been notified of the agenda but it was not a disciplinary meeting. It was planned as an information gathering meeting, to hear Mr Martinz's version of events, so that a decision could be made about what, if any, further action to take.

- [23] For these reasons I find that it was unnecessary for Mr Martinz to be offered a support person. Managers are entitled to discuss matters with their staff directly

when concerns are raised with them and disciplinary action is not contemplated. Certainly, Senior Sergeant Graham raised the slow handclap and Mr McKay's embarrassment but no disciplinary action was contemplated at that time.

- [24] There is no evidence before the Commission on which I could base a finding that Senior Sergeant Graham and Mr Cottam had prejudged Mr Martinz's behaviour. I would note though that on the evidence before the Commission, Mr Martinz participated in the slow handclap. It was unacceptable for the Branch Manager to behave in this manner towards the chair of the management committee at a public event.
- [25] It is uncontroversial that the meeting developed from a discussion of Mr Martinz's conduct on the awards night and its effect to more general matters of his communication style. Also raised were some concerns expressed by the management committee with respect to his communication style and not providing sufficient information. It is clear on the evidence that these matters had not been formally raised with Mr Martinz at any time before the meeting on 27 July 2010. However, according to Senior Sergeant Graham and Mr Cottam, members of the management committee had periodically raised with each of them informally concerns about Mr Martinz's manner of communication.
- [26] The Appellant contends that Mr Martinz was ambushed with criticisms about these matters. The Commission does not accept that contention. Although they were criticisms, they were not allegations as is contended in the Stressor. Mr Martinz may have perceived them to be unfair and without substance but they were matters of concern to the management committee about which he was entitled to be aware. I accept that despite these matters being raised with Mr Martinz without forewarning, it was reasonable to do so given the management committee was concerned about them and they followed on from a discussion about Mr Martinz's behaviour, including the manner of his apology to Mr McKay. The management committee is comprised of community representatives who volunteer their time. It is fundamentally important to effective working relationships for good lines of communication to exist between the paid manager and the volunteer committee and for the Branch Manager to provide information to the committee to assist them perform their functions.
- [27] I do not accept that either Senior Sergeant Graham or Mr Cottam raised Mr Martinz's cultural background in relation to his communication style. This was not a matter of concern to them and it is more likely that Mr Martinz raised the matter in defence of the issues raised with him.
- [28] I also consider that the outcome of the meeting was that Senior Sergeant Graham was to try to arrange a meeting between the management committee and Mr Martinz. Although Senior Sergeant Graham hoped to have Mr McKay participate, there was no guarantee of his attendance.
- [29] I accept that Mr Martinz was uncomfortable and concerned about the discussion of his communication style but I cannot find that the action taken by Senior Sergeant Graham and/or Mr Cottam was unreasonable or unreasonably taken. Moreover, I cannot find that Senior Sergeant Graham and/or Mr Cottam raised the matters of concern in an intimidating manner. As the Respondent notes, Senior Sergeant

Graham and/or Mr Cottam were well known to Mr Martinz. Further, and as previously stated, the meeting was not for disciplinary purposes.

Stressor 2 - 3 August 2010

- [30] In written submissions, the Appellant summarises Stressor 2 as "[l]ess than one week later, a mediation was conducted with Mr Martinz and 9 other people. Mr Martinz felt ambushed by what had happened." I note that the Statement of Stressors identifies Mr Martinz being "ambushed, intimidated, bullied and felt shocked by what had happened."

The Event

- [31] As a result of the meeting on 27 July 2010, a mediation was arranged for 3 August 2010. The mediator was Robin Bechly, formerly a Commissioner of the Queensland Industrial Relations Commission.
- [32] Mr Cottam prepared a brief for the mediator outlining the events leading up to the establishment of the mediation and the tensions between Mr Martinz and the committee of management. Mr Martinz did not receive a copy of the brief.
- [33] Mr Winters prepared a "roles/responsibilities" statement, which stated the list of attendees, their role, position/title, reason for attendance/relationship to parties and telephone number. Mr Martinz was described as the "respondent" and each of the members of the management committee were described as a "disaffected party".
- [34] Senior Sergeant Graham said he advised Mr Martinz on 30 July 2010 that the meeting was to be held on 3 August 2010. A diary entry to that effect was tendered in evidence. Mr Martinz said that he only received knowledge of the meeting on 3 August 2010 when he received the roles/responsibilities statement attached to an email, which he opened at about 4.00 pm. He attempted to contact Senior Sergeant Graham with his concerns about his portrayal as the respondent but was unable to reach him.
- [35] Mr Martinz claims to have been ambushed by the mediation.
- [36] He said that prior to the commencement of the mediation, Mr Cottam and a member of the committee of management approached the mediator, went into the kitchen and had a conversation. Mr Cottam handed paperwork to the mediator which they went through. They then left the kitchen and proceeded to the conference room.
- [37] Mr Cottam said he introduced himself to Mr Bechly and told him that he had forms for people to sign for their attendance. He also pointed out who the various people were. He denied providing any other paper work to the mediator at that time.
- [38] Quite a number of people attended the mediation - Mr Martinz, three others from the QPS, two representatives of the QPCYWA and four members of the management committee. Mr Martinz said he felt outnumbered. Mr Bechly appeared to recognise this because at the commencement he asked about a support person for Mr Martinz. Inspector Shane Dall'Osto, the relieving Inspector for District Patrol Services,

Brisbane West, was appointed to this role, however, he was not known to Mr Martinz and was senior in rank to him.

- [39] I do not accept that the entirety of the mediation was conducted with all attendees present. I prefer the evidence of Inspector Dall'Osto who agreed that Mr Bechly spoke first to the committee members and the QPS observers. Inspector Dall'Osto and Mr Martinz waited outside while that occurred and then Mr Bechly came and spoke to Mr Martinz and they then went back into the room together.
- [40] At the end of the mediation Mr Bechly outlined the various agreements that had been made that night. He sent a written copy of the outcome to the QPCYWA Head Office a few days later. A copy was not forwarded to Mr Martinz.
- [41] On 26 August 2010, Mr Martinz wrote to the QPCYWA expressing concern over the conduct of the mediation. In closing submissions for the Appellant, it was said that although the mediation miscarried, it did not do so because of anything the mediator did.

The Management Action

- [42] The Appellant submits that the mediation of 3 August 2010 was not reasonable management action taken reasonably for reasons including:
- Mr Martinz understood the mediation was to be between he and Mr McKay yet Mr McKay did not attend;
 - Mr Martinz was outnumbered by the unexpected attendees;
 - Mr Martinz was afforded little (if any) notice of the mediation;
 - Mr Martinz did not have input into the selection of the mediator or the matters to be ventilated;
 - the background document provided to the mediator was adverse to Mr Martinz;
 - Mr Martinz was deprived of the opportunity to have a support person of his choosing present. It was inappropriate to have Inspector Dall'Osto as his support person as he was unknown to Mr Martinz and was his superior officer; and
 - Mr Martinz was listed as the "respondent".
- [43] There is some confusion over whether the meeting was a facilitated meeting or a mediation. I have settled on the term "mediation" because it was used in the QPCYWA documentation. That said, it may not have been a mediation in the sense that parties were in dispute, rather the mediation was directed towards assisting the parties to develop a more constructive working relationship.
- [44] I do not accept the criticism that the mediation was only going to be between Mr Martinz and Mr McKay. I accept the evidence of Senior Sergeant Graham and Mr Cottam that the meeting was going to involve the management committee and Senior Sergeant Graham was to encourage Mr McKay to attend. This is because a discussion had occurred at the meeting on 27 July 2010 about Mr Martinz's communication style, issues which had been raised by members of the management committee. It would have been fruitless not to have the management committee present at a mediation when that was its purpose. Senior Sergeant Graham's attempt

to involve Mr McKay was not directed at a personal reconciliation between Mr McKay and Mr Martinz, rather it was an attempt by the use of an external facilitator to create an environment where all parties could work together.

- [45] I do not accept that Mr Martinz only learnt of the mediation on the day it was held. On the basis of the entry in Senior Sergeant Graham's diary, I am satisfied that Mr Martinz was advised of the date of the mediation on 30 July 2010. This was three days after the meeting had occurred between Mr Martinz, Senior Sergeant Graham and Mr Cottam and two days before the date of the mediation. Senior Sergeant Graham's diary shows that the proposed date for the mediation was 5 August 2010, however, Mr Bechly was not available that night but was on 3 August 2010.
- [46] Senior Sergeant Graham's diary entry of 3 August 2010 shows that Mr Martinz contacted him that morning to express concern about his portrayal as the respondent to the mediation. Mr Martinz could have only raised that concern having perused the "roles/responsibilities" document prepared by Mr Winters. The Commission accepts that although Senior Sergeant Graham attempted to address his concerns, Mr Martinz's portrayal as the "respondent" imputes a presumption that Mr Martinz was required to answer a case against him. Mr Martinz said he felt he was an "offender". I consider that the description of Mr Martinz as the "respondent" was inaccurate and unhelpful.
- [47] The number of people attending the mediation would have exacerbated his perception that he had a case to answer. That nine others were attending would have been evident from the roles/responsibilities statement. Attending the mediation were three officers of the QPS, including Senior Sergeant Graham (who was also a member of the management committee) and Inspector Dall'Osto. The third officer was Inspector Mike Mackay, the QPS State Liaison Officer for the QPCYWA. All three QPS officers had some form of supervisory responsibility for Mr Martinz. Although Mr Martinz did not express concern about the number of people attending to Senior Sergeant Graham on the morning of 3 August 2010, I accept he felt outnumbered and without support on the night.
- [48] The Regulator contends that it was unnecessary for Mr Martinz to have a support person because it was not a disciplinary process. However, Mr Bechly recognised the imbalance when he asked about support for Mr Martinz. Inspector Dall'Osto was chosen as he did not have any affiliation with any of the other participants. However, for management not to have considered offering Mr Martinz a support person prior to the mediation is unreasonable management action. It is also unreasonable to have at the commencement of the mediation a stranger appointed as the support person who is also a superior officer.
- [49] The background information provided to Mr Bechly was prepared by Mr Cottam. It referred to some of the difficulties experienced by the management committee with Mr Martinz as well as other issues. It is worth noting that in his evidence Mr Martinz did not dispute all of the matters listed. The document also references the awards night and subsequent management committee meeting. From the evidence heard, there can be little contention about those remarks. It is true that the document identifies the difficulties but is also positive about Mr Martinz's financial

management. The document lists four desired outcomes, only two of which related to Mr Martinz.

- [50] The Commission accepts that Mr Martinz did not have input into the selection of the mediator, the formulation of the information provided to the mediator or the matters to be ventilated at the mediation. I accept each and all of these created a perception of unfairness on the part of Mr Martinz and, perhaps with the exception of the selection of the mediator, were unreasonable management actions.
- [51] The Appellant contends that the mediation miscarried. I understand the submission to be that the preparatory work undertaken by officers of the QPCYWA necessarily impacted adversely on the interests of Mr Martinz and infected the mediation process. The Commission accepts that submission to a point. In particular, Mr Martinz did not have the opportunity to brief Mr Bechly prior to the mediation about his perspective on the issues that had been raised. However, he did meet with Mr Bechly privately during the mediation which would have provided the opportunity to present his views. Despite the failings in the preparation, I am of the view that the mediation was conducted fairly and reasonably. Mr Cottam described it as a structured and controlled meeting. Ground rules were established, including that the process was not to be antagonistic.
- [52] The Appellant contends the mediation lacked substance and form if its purpose was to air issues. In my view the evidence points to a conclusion that the purpose of the mediation was to facilitate a positive working relationship between Mr Martinz and the management committee as it moved forward after the resignation of Mr McKay. To achieve that end participants in the process, including Mr Martinz, had the opportunity to raise issues and concerns.
- [53] Mr Martinz said he was very distressed, angry, flustered and teary during the mediation. That evidence is not supported by Senior Sergeant Graham, Mr Cottam or Inspector Dall'Osto. Their evidence shows that Mr Martinz was able to raise issues and contributed to the discussion. I prefer the evidence of the witnesses for the Regulator and find that Mr Martinz significantly overstated his emotional state at the mediation. Had Mr Martinz displayed any of the above emotions, then I am satisfied Mr Bechly, an experienced mediator, would have taken steps to address the situation. For this reason the Commission does not accept the criticisms made by the Appellant that the mediation lacked substance and form. I accept however that Mr Martinz was understandably nervous.
- [54] Mr Martinz also said he was disoriented and in a state of shock when Mr Bechly read out the outcomes. Again, this contrasts with the evidence of Senior Sergeant Graham who said everyone was happy with the outcomes. Further, he saw Mr Martinz immediately after the meeting and he seemed fine. Senior Sergeant Graham walked away from the mediation believing it to be successful. I found Senior Sergeant Graham to generally be a temperate witness whereas Mr Martinz was prone to exaggeration. I am satisfied that the evidence of Senior Sergeant Graham would have reflected any concerns he had about the participation or emotional state of Mr Martinz that night.
- [55] I accept that Mr Martinz did not receive the written outcomes document prepared by Mr Bechly and forwarded to the QPCYWA. However, the outcomes were read by

Mr Bechly at the meeting so Mr Martinz would have been aware of them. The omission of not providing the written document could not be explained but was not raised as an unreasonable management action. In the circumstances it was a blemish.

- [56] In my view the product of the mediation, that is, the outcomes, can be used to assess whether the mediation was a fair and reasonable process. One outcome was that Mr Martinz was to participate in some communications training but the overarching outcome was the resolution by the management committee and Mr Martinz to work together. I am satisfied that the outcomes document reflects the evidence of Senior Sergeant Graham, Mr Cottam and Inspector Dall'Osto that the meeting was constructive.
- [57] While some of the management actions taken with respect to the organisation of the mediation were unreasonable, in my view, the outcomes were fair and reasonable and reflected the manner in which the mediation was conducted. The Appellant accepts that the mediation was management action and in that light, I find it was reasonable and reasonably taken.

Stressor 3 - 10 September 2010

- [58] The third stressor was reformulated in the Appellant's written submissions (without change to the intent) as:

"Without notice, two Inspectors of Police attended the Hills PCYC where 12 allegations were put forward to Mr Martinz in relation to misconduct. Mr Martinz was intimidated and felt belittled by the process."

The Event

- [59] Inspector Dall'Osto was relieving at Brisbane West when he became aware of a number of issues concerning Mr Martinz. One of the issues was secondary employment and concerned Mr Martinz's involvement in farms. This was a matter raised during the conversation between Inspector Dall'Osto and Mr Martinz while waiting for the mediator. Other issues included the slow handclap at the awards night, Mr Martinz driving the PCYC vehicle with the stickers covered by magnetic strips and that he collected waste bread from Bakers Delight at Lutwyche at night with the stickers covered. He spoke to Senior Sergeant Graham, another senior sergeant, the QPCYWA and Bakers Delight at Lutwyche to gain more information about the issues. In relation to the bread allegation, Inspector Dall'Osto went to the Lutwyche Shopping Centre on the evening of 9 September 2010 and observed the vehicle with the PCYC stickers obscured.
- [60] On 10 September 2010, Inspector Dall'Osto and Acting Inspector Trenerry arrived at the Hills District PCYC with the purpose of informing Mr Martinz of a number of allegations that had been raised against him and to collect magnetic strips from the PCYC vehicle. Before seeing Mr Martinz, Inspector Dall'Osto and Acting Inspector Trenerry inspected the PCYC vehicle and saw that there were 10 large rubbish bags holding bread. In addition, Inspector Dall'Osto looked at the stickers on the side of the vehicle and saw a small mark on one of them where it appeared some magnetic strip had been placed above it.

- [61] The two Inspectors then entered the office of the PCYC to meet with Mr Martinz. Their visit was unannounced.
- [62] Mr Martinz claims as part of stressor 3, that the two Inspectors stood either side of him in his office while the allegations were being read. Inspector Dall'Osto denied this and said they sat in chairs in Mr Martinz's office.
- [63] Inspector Dall'Osto recorded the meeting with the knowledge of the other participants. The meeting commenced with Inspector Dall'Osto asking Mr Martinz about the bread in the PCYC vehicle, including where it came from and what it was used for. After a discussion on this topic, Inspector Dall'Osto informed Mr Martinz that a number of issues had come to his attention and they were to be investigated. In all, 12 allegations were read to Mr Martinz. He was not asked to respond to any of the allegations immediately, although on occasion he sought to respond or provided information either voluntarily or in response to questions asked.
- [64] Inspector Dall'Osto asked questions about such matters as to whether Mr Martinz had obtained approval for secondary employment. Acting Inspector Trenerry reinforced that Mr Martinz would be given an opportunity to formally respond to the allegations. At the conclusion of the meeting, Inspector Dall'Osto requested that Mr Martinz attend a meeting at the QPS District office at Indooroopilly at 1.00 pm that day and to bring certain documents with him. Mr Martinz attempted to retrieve some of the documents immediately but he was not pressed for this.
- [65] Inspector Dall'Osto then requested Mr Martinz accompany him to the PCYC vehicle as he wanted to obtain the mileage and to retrieve the stickers. Further discussion ensued about the bags of bread in the vehicle. Inspector Dall'Osto then told Mr Martinz that he had seen the PCYC vehicle the previous night and it had magnetic strips over the PCYC stickers. He then said, "you have lied to me". After initially denying that he had the magnetic strips and having been pressed by Inspector Dall'Osto, Mr Martinz said that the strips were at his home. Inspector Dall'Osto directed Mr Martinz to collect the strips and bring them with him to the office at 1.00 pm. Certain other directions were given about the vehicle.
- [66] At the conclusion of the meeting Mr Martinz asked for a copy of the allegations. Inspector Dall'Osto advised he would receive a copy of the tape recording of the meeting at 1.00 pm and would receive the written allegations in due course.
- [67] After the Inspectors left, Mr Martinz sought advice from the Queensland Police Union of Employees. He went to his General Practitioner and received a medical certificate. Mr Martinz did not return to work at the QPS.

The Management Action

- [68] The Appellant contends that the management action was not reasonable or reasonably taken because:
- the two Inspectors attended without warning or notice;
 - the two Inspectors walked into Mr Martinz's office and shut the door;

- Mr Martinz was ambushed given the veracity of the subject matters raised at the (recorded) interview;
- when viewed objectively, the actions of the two Inspectors were confronting;
- it was a formal process;
- Inspector Dall'Osto accused Mr Martinz of lying which had a "definite impact" on Mr Martinz; and
- Mr Martinz was deprived of an entitlement to adequately respond to the allegations.

[69] The Commission accepts the submission of the Respondent that it is unnecessary to give notice of a meeting when the purpose of the meeting is to give notice of allegations that have been made. If that was all Inspector Dall'Osto did, then there would be no issue that the management action was reasonable and reasonably taken. However, at the meeting Inspector Dall'Osto not only gave notice of the allegations but asked questions and entered into discussions with Mr Martinz about the bread and secondary employment. In his evidence, Inspector Dall'Osto acknowledged that he had spent too long discussing the bread issue.

[70] Given that the bread was in the PCYC vehicle on the arrival of Inspector Dall'Osto and Acting Inspector Trenerry, it was not unreasonable to seek clarification about why the bread was there. This led onto a discussion about what the bread was used for and related matters. Inspector Dall'Osto was concerned that a police officer was receiving a gratuity that had not been declared. When Mr Martinz said some of it was used as cattle feed on his property, this led to the question of whether he had approval for secondary employment. Although the meeting was ostensibly for the purpose of notifying Mr Martinz of allegations that had been made, it had elements of an information gathering exercise.

[71] The Appellant submits it was unreasonable to recycle as an allegation a matter that had been previously dealt with. The case in point is the slow handclap at the awards night, which had been addressed at the meeting of 27 July 2010 and was instrumental in having the mediation established. In respect of this issue Inspector Dall'Osto said that there are high expectations about the conduct of Police Officers and as his supervising officer, he had a responsibility to resolve any issues.

[72] In my view the slow handclap issue had been addressed by Senior Sergeant Graham at the meeting of 27 July 2010. He did not consider it necessary for formal disciplinary action to ensue. The bigger issue was the communication between the management committee and Mr Martinz. That issue had been resolved, despite Mr McKay declining to participate in the mediation. For these reasons, it was unreasonable to raise the slow handclap issue again.

[73] The Appellant also considers it was unreasonable of Inspector Dall'Osto to raise the secondary employment issue when Mr Martinz had disclosed to him in private conversation on the night of the mediation that he had cattle properties. The Appellant contends this was a confidential disclosure. Inspector Dall'Osto accepted that the disclosure had been made in that way but said it was also common knowledge. Under cross-examination, he accepted that although the mediation was confidential, he was duty bound as a Police Officer to raise allegations about the conduct of another Police Officer that might impact on his propriety.

- [74] Inspector Dall'Osto was in a difficult position with respect to the secondary employment allegation. Others had made him aware that Mr Martinz was running cattle properties and Mr Martinz confidentially disclosed he was doing this at the mediation. Inspector Dall'Osto used the information gathered from these sources to clarify with Human Resources whether Mr Martinz had registered that secondary employment. I am satisfied that Inspector Dall'Osto did not act only on a disclosure made privately. In the circumstances I do not consider it was unreasonable for Inspector Dall'Osto to pursue the issue.
- [75] The meeting was a formal process in the sense that Mr Martinz was being advised of the allegations against him and the ensuing process. The meeting was recorded, with the knowledge of Mr Martinz. However, it was not the appropriate time for Mr Martinz to formally respond to the allegations as proper process requires the allegations to be made in writing with supporting evidence, if any, and for the employee being given adequate time to seek advice and to respond. Inspector Trenerry advised Mr Martinz he would be given the opportunity to formally respond. The Commission accepts though that Mr Martinz responded when directly asked and also attempted to provide additional information.
- [76] I accept the door of Mr Martinz's office was shut to allow the meeting to occur. This was reasonable to prevent other staff over-hearing confidential and damaging allegations being raised about their manager. I do not accept Mr Martinz's evidence that the door was locked or that he was required to stand while the allegations were being read. A recording of the meeting in Mr Martinz's office was tendered in evidence. It shows that the three police officers discussed the number of chairs prior to the commencement of the meeting proper. In my view it is improbable that a discussion ensuring there were three chairs available would occur and then for the participants to stand during the meeting.
- [77] The Commission also accepts that the actions of the two Inspectors were confronting. However, they were not there on a social visit but to notify Mr Martinz of a series of allegations. In any situation that would be confronting to the recipient of the news but the mere fact that the actions were confronting does not mean they were also unreasonable. Notification was required to be given and Inspector Dall'Osto and Inspector Trenerry remained professional for the duration of the meeting.
- [78] The issue about Mr Martinz lying arose because Inspector Dall'Osto had observed him engaging in behaviour, which he denied. Given Mr Martinz's denial and the importance of members of the QPS to act with integrity, it was reasonable for Inspector Dall'Osto to confront Mr Martinz with the allegation that he was lying. Mr Martinz ultimately conceded that he had covered the PCYC logo on the vehicle with magnetic strips, contrary to instructions. Mr Martinz had previously been instructed not to cover the PCYC logos with magnetic strips.
- [79] The Commission accepts that the accusation made by Inspector Dall'Osto had an impact on Mr Martinz. However, Mr Martinz was lying and it was by his own actions, and not those of management, that put him in the position where his veracity was challenged.

[80] Having regard to all of the actions taken by Inspector Dall'Osto that day, I am satisfied that overall his actions were reasonable and reasonably taken.

Conclusion

[81] The Appellant contends that the management action taken with respect to the stressors whether considered separately and/or globally could not be found to be reasonable management action taken reasonably. The Appellant also contends that it is open to the Commission to consider the management action globally because the chain of events, so proximate in time, had a cumulative effect on Mr Martinz.

[82] The Regulator contends that management action taken in its entirety was reasonable. However, the third stressor should be treated separately from the first two as they involved issues jointly affecting the QPS and the QPCWA whereas the third stressor primarily concerned disciplinary issues within the QPS.

[83] It is clear that the three events occurred within a short space of time. However, the action taken on 10 September 2010 was not taken as a consequence of the first two events, despite the list of allegations including the slow handclap issue and secondary employment. It was a discrete event, involving different managers to those involved in the management action taken in respect of Stressors 1 and 2. Further, and as the Regulator submits, the third stressor concerned disciplinary matters within the QPS whereas the first two involved not only the QPS but the QPCYWA as well. In the circumstances the Commission does not consider this is a case which lends itself to a global assessment of the management action taken.

[84] I have found that with respect to Stressor 1, the management actions taken by Senior Sergeant Graham and Mr Cottam in connection with Mr McKay's complaint were reasonable and taken reasonably. There is no evidence to support a finding that they behaved in an intimidating manner nor was the meeting on 27 July 2010 for disciplinary purposes.

[85] The meeting developed into a discussion about Mr Martinz's communication style. Again, this was reasonable given that part of Mr McKay's complaint had been about Mr Martinz's "flippant" apology. Senior Sergeant Graham and Mr Cottam were also aware that other management committee members had concerns about Mr Martinz's communication style. Although these had not been previously raised, the meeting of 27 July 2010 was an appropriate forum in which to discuss the concerns. Moreover, Senior Sergeant Graham and Mr Cottam did not raise the issues in an intimidating manner. For these reasons, the management action taken with respect to Stressor 1 was reasonable and reasonably taken.

[86] The Commission accepts that the work preparatory to the mediation was unreasonable management action. In particular, reference is made to the roles/responsibilities document; the background brief to the mediator; the number of people attending and the failure to offer Mr Martinz in advance the opportunity to have a support person present. For these reasons I accept that Mr Martinz felt defensive and disadvantaged but I am not satisfied that Mr Martinz was very distressed, angry and flustered at the mediation.

- [87] I am also not satisfied that the mediation itself miscarried. The evidence is that Mr Bechly kept the proceedings positive and ensured all participants, including Mr Martinz, were able to speak. Although I have concluded that the preparatory work was unreasonable management action, I am not able to find that the conduct and/or the outcomes of the mediation constituted unreasonable management action taken unreasonably.
- [88] The third stressor is the events of 10 September 2010. Inspector Dall'Osto and Inspector Trenerry provided appropriate notification to Mr Martinz of the allegations. Although some of the meeting departed from simply notifying Mr Martinz to more of an information gathering exercise, Mr Martinz was still to be provided with the allegations in writing and given a proper opportunity to respond. Mr Martinz was accused of lying but he brought this on himself when he did not answer Inspector Dall'Osto truthfully. In respect of this stressor the Commission concluded that having regard to all of the events that took place at the Hills District PCYC involving Inspector Dall'Osto, his management actions that day were reasonable and taken reasonably.
- [89] To conclude, the Appellant submits that the chain of events had a cumulative impact on Mr Martinz. Although the determination that needs to be made in respect of s 32(5) of the Act is a mixed issue of fact and law, ordinarily the Commission is assisted by expert medical evidence.¹ Despite the absence of medical opinion, I consider it is open to conclude that the chain of events had a cumulative impact on Mr Martinz, particularly as they all occurred within a six week period. The chain commenced with the first event that occurred on 27 July 2010. In those circumstances I have concluded that the injury arose out of or in the course of the first event (Stressor 1). The management action taken with respect to that event was found to have been reasonable and taken reasonably.² In my view, that finding is sufficient to determine that the injury is withdrawn from s 32(1) because of the operation of s 32(5)(a) of the Act. However, and for completeness, I record that I would have reached the same conclusion given the findings made regarding the management action taken in respect of Stressors 2 and 3.
- [90] The Appeal is dismissed. The decision of the Regulator is confirmed.
- [91] The Appellant is to pay the Regulator's costs of and incidental to this appeal, to be agreed, or failing agreement, to be the subject of a further application to the Commission.
- [92] Order accordingly.

¹ *Q-COMP v Darren Bruce Parsons* (2007) 185 QGIG 1 at 3.

² *Q-COMP v Glen Rowe* (2009) 191 QGIG 67.